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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,442	09/30/2003	Jeffrey A. Nowell	PTOZ 2 00021	5633
27885	7590	10/13/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			HORTON, YVONNE MICHELE	
			ART UNIT	PAPER NUMBER

3635

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,442

Applicant(s)

NOWELL ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 13 and 23-27 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 14-22 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 10 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

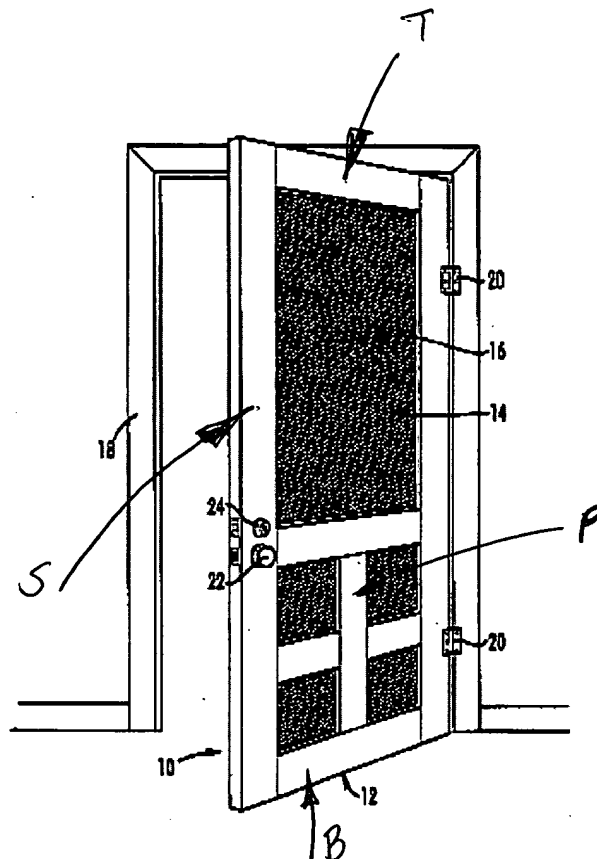
Claim Objections

Claim 16 recites the limitation "said first and second screen panels" in line 2. There is insufficient antecedent basis for this limitation in the claim. The first and second screen panels were introduced in claim 15; however, claim 16 does not depend upon claim 15, it depends on claim 14. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3,5,8 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #6,250,040 to GREEN. GREEN discloses the use of a frame assembly (12) including a bottom frame (B), a pair of spaced side frame members (36,38), a top frame (30,32) spaced from the bottom frame (B) and connected to the side frame members (36,38), at least one picket (44) extending between and connected to the top (30,32) frame and bottom (B) frame, and a screen (14) also mounted to the top (30,32),side (36,38), and bottom frame members (B). See below. Regarding claims 2 and 3, the at



least one picket (44) being a rigid tubular member, column 5, line 4, and has a rectangular cross-section. In reference to claim 5, the top (30,32) and bottom (B) frame members have spaced holes (50), column 3, lines 49-57, to receive the ends of the picket (44). Regarding claim 8, the frame assembly (12) of GREEN further includes a layer of seam sealer in the form of an adhesive, column 3, lines 55-57, positioned between the ends of the members.

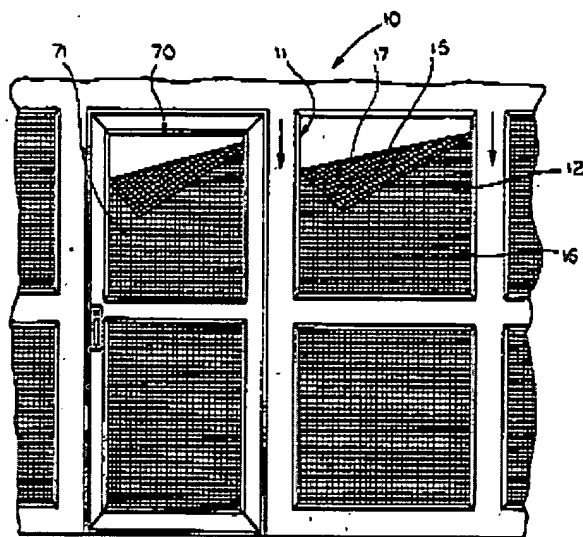
Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,250,040 to GREEN. GREEN discloses the basic claimed frame assembly except for the use of a plurality of pickets. Although GREEN is silent in this regard, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of GREEN with additional picket, since the mere rearranging or addition of essential working parts of an invention involves only routine skill in the art. For instance, another picket would not only give added strength to the current assembly, but would also provide a slightly different aesthetic appearance to the frame itself.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,250,040 to GREEN in view of US Patent #5,046,546 to BENEDYK et al. GREEN discloses the basic claimed frame assembly except for the use of multiple screens. BENEDYK et al. discloses that it is known in the art to provide a frame assembly (10) with multiple screens (12), specifically a separate screen from the top (T) to the middle picket (P) and from the middle picket (P) to the bottom (B2). Although the figure is cut-off, it too would be understood that the screen (12) of BENEDYK et al. includes a separate screen positioned between side members (S) and pickets (P). See below.



Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,250,040 to GREEN. GREEN discloses the use of a frame assembly (12) defining an opening (16) and including a bottom frame (B), a pair of spaced side frame members (36,38), a top frame (30,32) spaced from the bottom frame (B) and connected to the side frame members (36,38), a balustrade (40) connected thereto and including a horizontal member (42) and at least one picket (44) extending across the opening (16) between and connected to the top (30,32) frame and bottom (B) frame, and a screen (14) also extending across the opening (16). GREEN discloses the basic claimed frame assembly except for the use of a plurality of pickets. Although GREEN is silent in this regard, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of GREEN with additional picket, since the mere rearranging or addition of essential working parts of an invention involves only routine skill in the art. For instance, another picket would not only give added strength

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to the current assembly, but would also provide a slightly different aesthetic appearance to the frame itself.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,250,040 to GREEN in view of US Patent #5,046,546 to BENEDYK et al. GREEN discloses the basic claimed frame assembly except for the use of first and second screens. BENEDYK et al. discloses that it is known in the art to provide a frame assembly (10) with multiple screens (12), specifically, first and second screens extending across an opening (unlabeled) above and below a horizontal member (P) such that the screens (12) are removably mounted, column 5, line 57-63. See above. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of GREEN with multiple screen panels, as taught by BENEDYK et al. in order to provide the assembly with an ease of replacing or repairing the screen members without the additional cost of having to replace the entire screen apparatus.

Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,250,040 to GREEN in view of US Patent #5,046,546 to BENEDYK et al. GREEN discloses the use of a frame assembly (12) defining an opening (16) and including a bottom frame (B), a pair of spaced side frame members (36,38), a first intermediate frame (42), a top frame (30,32) spaced from the bottom frame (B) and connected to the side frame members (36,38), a balustrade connected thereto and including a horizontal member (42) and at least one picket (44) extending across the opening (16) between and connected to the top (30,32) frame and bottom (B) frame,

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and a screen (14) also extending across the opening (16). GREEN discloses the basic claimed frame assembly except for the use of a plurality of pickets and except for the use of first and second screens. Regarding the plurality of pickets, although GREEN is silent in this regard, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of GREEN with additional picket, since the mere rearranging or addition of essential working parts of an invention involves only routine skill in the art. For instance, another picket would not only give added strength to the current assembly, but would also provide a slightly different aesthetic appearance to the frame itself. In reference to the multiple screen members, BENEDYK et al. discloses that it is known in the art to provide a frame assembly (10) with multiple screens (12), specifically, first and second screens extending across an opening (unlabeled) above and below an intermediate member (P) such that the screens (12) are removably mounted, column 5, line 57-63. See above. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of GREEN with multiple screen panels, as taught by BENEDYK et al. in order to provide the assembly with an ease of replacing or repairing the screen members without the additional cost of having to replace the entire screen apparatus. For instance is the bottom portion of the screen of the assembly of GREEN were to get a tear or cut, the entire screen would have to be replaced; whereas, if the bottom screen of BENEDYK et al. were to be torn, only the bottom would need replacing thereby decreasing the cost of fixing the assembly. Regarding to claim 18, the at least one picket (44) being a rigid tubular member, column 5, line 4. In reference

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to claim 19, it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the plurality of picket a sufficient distance. Regarding claims 20-22, the top (30,32) and bottom (B) frame members have spaced holes (50), column 3, lines 49-57, to receive the ends of the picket (44) and the frame assembly (12) of GREEN further includes a layer of seam sealer in the form of an adhesive, column 3, lines 55-57, positioned between the ends of the members; wherein the pickets (44) are received in the holes (50) by fasteners (46). In further regards to claim 20 and there being "sets" of holes, it would have been obvious to one having ordinary skill in the art at the time the invention was made that if there are two frame members, there would be two holes; thereby creating a set.

Allowable Subject Matter

Claims 6,7,10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12-13 and 23-27 are allowed.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne M. Horton
Art Unit 3635
10/5/05